ത്തന്നാൽ കൊള്ളാമെന്നുള്ള അപേക്ഷയോടുകൂടി ഞാൻ ഇതിനെ പിൻ വലിക്കുന്നു.

Motion was, with leave, withdrawn.

(23) Reduction of Water Cess by 50 per cent for new conversion.

Mr. A. Eachara Menon:—This resolution was sent long before the notification in the Gazette where the Government had been pleased to give a remission of the whole kisth. So I do not move it.

The following resolution was, with leave withdrawn.

"This Council recommends to the Government that the water cess of Rs. 5 per acre for new conversions be reduced by 50 per cent".

(24) Refunding of income-tax on kuri 'Leladayam'.

Mr. E. Ikkanda Warriar:— Sir, I move that *"In view of the recent ruling of the Chief Court on the question of collecting income tax on kuri leladayam* (കുറി ലേലാദായം) *this Council recommends to the Government to refund all amounts collected by them which they would not have so collected if they had known that the law was as now laid down by the Chief Court".*

Sir, the leladayams, i. e., the discounts that are usually allowed in kuries were considered as an income for the purpose of taxation by the Income Tax Officers and were taxed. On the face of it, that collection was considered to be very inequitous. It is practically a paper adjustment. They do not get anything in cash. Appeals were preferred and the Chief Court has now finally set at rest the law by holding that these leladayams cannot be taxed. How it works out we shall see. On account of this wrong interpretation given to the law by the Income Tax Department they have collected taxes from persons who according to law are not bound to pay. It is not only the actual leladayam that are taxed. Persons who would not have come under the law of taxation, i. e., persons whose income would not have been Rs. 2000, had to be taxed on account of this interpretation because if this fictitious amount is also added on to the actual income of the assessee the total becomes taxable. Suppose a man's income is only Rs. 1,900. He will not be taxed. But if he gets a small reduction of Rs. 101 or even Rs. 100 by means of leladayam or adjustments in the accounts he will be taxed for Rs. 2,000. This collection is on the face of it illegal. The Government had no power to collect it. They had been collecting it for the last two years. The resolution requests the Government to refund the amounts so illegally collected. I think it is only just and fair that the Government when they understand

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that they have done a wrong have to retract it and make amends for the wrong done. I wanted to know the extent of loss which the assessers are put to or the amount the Government was able to make on account of this collection. I asked the question to know what the amount is and the Government told me that it would not be possible to ascertain the amount as no tax is calculated separately under this head. Of course, it would not have been difficult for them if they really wanted to get at the figures. Probably they would have to go through the accounts a little more in detail and examine the assessments made before. Of course, there is some amount of labour involved in that and particularly when it happens that that labour is not at all paying to the Government or it will be losing to the Government they have no temptation to do it. That is why, probably, they did not even attempt it. Any way, I shall suggest a remedy for that. It is this. The Government may fix a period within which those who have been taxed are allowed to claim refund. Say, for instance, they can give six months' time for the people to come and prove before them that their leladayams had been taxed and that they are entitled to the refund and the Government need in that case examine only those cases. I, therefore, request that the Government may be pleased to accept this most equitable resolution.

Mr. Joseph Pettah:—I beg to second the Resolution. I do not think that there is any necessity for a long explanation. The inequity of the thing has been decided by the Chief Court. The Chief Court has decided that this impost was unjust. The Chief Court has not laid down any new law; it is only an interpretation of the law which was existing at the time when the collections were made. The law as it stood then did not allow the Government to collect such an impost. The amount that has been unjustly collected has to be refunded. That seems to be a very sound proposition. In certain cases though the claim for refund may be a just one it may be that there may be practical difficulties of such a serious kind that the whole thing would be impracticable. Such impracticability does not arise in this case because the Government can put the burden on the parties concerned to claim the refund and also to prove the amount which has been assessed under this particular item called Leladhayam If that is done, the work that is left to the Government will be only to verify and satisfy themselves that the claims are reasonable in which case they can give a refund. As the Hon'ble mover has pointed out it is not merely the tax on Leladhayam that comes to the question; but on account of the addition of the Leladhayam to the other income, certain persons have come into the class of people liable to pay income-tax. If this portion is deducted they would escape all taxation altogether. So it is a very serious case and therefore the Government would sympathetically consider

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this question and would redress the injustice that has already been done.

Mr. K. Achyuta Menon:—Mr. President Sir, there is an attractiveness about this resolution which is very misleading. The point is not whether the refund is justifiable morally, but whether the refund is practicable or justifiable from a legal point of view, that is the point. Hon'ble Members should not confuse morality with law. I will make the position clear. The Income-tax Regulation is a Regulation and the procedure under that Regulation has to be governed by its provisions. An assessee who is dis-satisfied with the assessment has certain remedies open to him under the law. The assessment may be annulled or modified in proper cases. So far as I know there are only three remedies provided under the Regulation, appeals, reviews and petitions for reference to the Chief Court. There are time limits prescribed for these. In the absence of any of these steps taken the assessment, under the Regulation, becomes final and conclusive. The question is whether in the case of assessments which have become final and conclusive, for want of proper steps being taken by the assessee, we should still interfere with the assessment on the ground that according to a later decision of the Chief Court one of the items of the concluded assessment should not be taxed. That is a simple point. If that procedure were to be adopted by the Government and if we are going to interfere with concluded assessments without reference to the question of time merely because at a later date the Chief Court declared that the law worked by the Income-tax Department ought to have been worked in a different manner, there will be no finality with regard to these assessments at all.

Mr. Joseph Pettah:—It is only after the decision that these people can know that it is unjust, and then they cannot prefer any claim.

Mr. K. Achyuta Menon:—In the case of concluded judgments it is always so. It is only after the assessment is declared to be wrong that you know a hardship has been worked. Now this is only a question of Leladayam. Some 15 years afterwards it may be another. Now we only pay let us suppose 5 per cent for depreciation of machinery. Suppose afterwards the Chief Court decides that you should have allowed ten per cent for depreciation of machinery. Are we going to be deprived of the benefit of a lesser reduction merely because of the decision of the Chief Court. The Chief Court declares the law. We have to accept it. But the question is, can we interfere in the case of concluded assessments. The assessee has not taken the matter in appeal before the Deputy Commissioner or in Review to the commissioner and the assessee has not made a petition for reference because he was satisfied that the decision of the Incom-tax authorities

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was correct. The net result is that these assessments have become final. They cannot be re-opened by any process known to law merely because of a later decision. In the case of these concluded assessments the Chief Court has now declared that one of the items which was taxed by the Income-tax authorities ought not to have been taxed. The question is, can on the strength of this decision concluded decisions be re-opened and proper relief given to the assessee?

Mr. Joseph Pettah:—The people concerned did not take any steps mentioned by the Hon'ble Member because they thought that they were made by responsible officers and the law was interpreted correctly.

Mr. K. Achyuta Menon:— I do not dispute it. Suppose the court makes a mistake in a judgment. It is not because of any action on the part of the litigant that the Court went wrong. They have been all along fighting for the correct decision. Suppose four years afterwards that law was interpreted in another way and it was found that the Court's original decision was wrong. What can the Government do? Can they give proper relief in all such cases of concluded judgments.

Mr. M. A. Chakko:—Suppose the Government omitted to tax an item, can they re-open it now ?

Mr. K. Achyuta Menon:— It cannot do that. I was coming to that point. Suppose the Government omitted to tax an item and the Chief Court decided afterwards that it was an item to be taxed, the Government on the strength of this decision could not claim this amount, because there is a time limit for these things. No fresh assessment can be re-opened after the lapse of a certain time.

Mr. Joseph Pettah:—Cannot that concession be extended here also ?

Mr. K. Achyuta Menon:— For that the law must be changed. As it is the Government is helpless. Assessments are final under the law and in the case of final assessments the Government cannot order refunds merely because the Chief Court has decided in a particular manner. Suppose tomorrow a contrary decision takes place. The Chief Court is at liberty to change their decision. Can the Government change the assessment once made once again.

Mr. M. A. Chakko:—A Proclamation will be enough.

Mr. K. Achyuta Menon:—There cannot be any Proclamation. No Proclamation can be made on account of this decision.

Dr. A. R. Menon:— Was there not such a thing ?

Mr. K. Achyuta Menon:— Where ?

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Dr. A. R. Menon:— In Cochin State.

Mr. K. Achyuta Menon:— Not one Proclamation upsetting concluded judgments has so far as I know been issued.

Dr. A. R. Menon:— Yes.

Mr. K. Achyuta Menon:— No. I proceed.

There is a decision by the Income-tax authorities. It is taken in appeal and after the appeal it becomes final. There is no review for the Commissioner, there is no reference to the Chief Court.

Mr. M. A Chakko:—We had an amendment of the Municipal Regulation in this sitting itself.

Mr. K. Achyuta Menon:— We can amend this Regulation also. But without amending the Regulation, merely because the Chief Court has decided that a certain item is not to be taxed we cannot in the case of concluded assessments re-open that question. Suppose the Chief Court said that a 5 per cent deduction on account of depreciation is not enough.

Mr. Ikkanda Warriar:— The law is specific on this point.

Mr. K. Achyuta Menon:—The law is not specific on that point.

Dr. A. R. Menon:— Is it not specific that you have collected a certain amount of money which you were not entitled to collect?

Mr. K. Achyuta Menon:— Quite so. But I am only citing parallel cases. We are now allowing let us suppose a reduction of 5 per cent. Suppose the Chief Court says that we ought to have given ten per cent. Are we to refund the whole amount collected?

Mr. M. A. Chakko:— It is not a mistake in law but it is a mistake of facts.

Mr. K. Achyuta Menon:— What is the mistake in fact? Supposing there is a mistake of law even then the judgment becomes final. There must be an end to litigation.

Mr. Joseph Pettah:— Wherever practicable the question of equity comes.

Mr. K. Achyuta Menon:— Equity is something which is different from law.

Mr. E. Ikkanda Warriar:— Is there no difference between private parties fighting each other and the Government collecting the tax from the people. You are only saying that there is limitation.

Mr. K. Achyuta Menon:— I am surprised that the Hon'ble gentlemen who knows law says that incometax assessment is not final merely because Government is a party.

Mr. E Ikkanda Warriar:— I shall explain how it is purely a question of limitation. According to the law you must prefer appeals, reviews or references to the Chief Courts within a prescribed

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time. Now that period is over. If you are not relying on the law of limitation and the period for appeals is not over I would not have come before you. They would certainly go before the Chief Court and get a decision. But since it is not possible now we are asking you this.

Mr. K. Achyuta Menon:— Suppose it is a suit on a pro-note. The courts have invariably held that three years is the period of limitation. The suit was filed after 3 years and the suit was dismissed. Suppose the Chief Court after the appeal time has expired holds that the limitation is really 6 years. What happens in the case of people who have lost the case? Suppose the suit is against the Government. The Government owed a certain amount to A. A sued the Government. The Government won on the question of limitation. After the appeal time was over the Chief Court decided in another case that limitation is otherwise. Can it be a reason for claiming the amount from the Government for the reason that the judgment ought not have been so. It was a concluded case and the appeal time was over and so the party cannot claim the refund. It is a large question of principle and this principle has a universal application. Honourable Members should see that in the case of concluded assessment the question cannot be reopened. Suppose the decision of the Chief Court came after many years. Then does it mean that the whole amount collected for all these years are to be refunded? This is the first time that this question has come up. The question is not free from difficulties. Even the Chief Court has admitted that it is a perfectly arguable point. But they took the view that the deductions which a kuri subscriber gets are not in the nature of an income and that it should not be taxed. This is a concluded case of assessment and we are asked to reopen it. I say there is no law for that. At present it is raised in the case of Leladayam. Tomorrow there may be another decision. If we are going to make refunds all these time there will be no end to this.

Mr. Joseph Pettah:— Can one believe, sir, that the Chief Court would give such decisions every now and then?

Mr. K. Achyuta Menon—Yesterday I have referred another matter. The Question whether a foreign bank or company doing money lending business here which has branches here can be taxed was referred by me. I am bound to a large extent to make such references when the party has deposited 100 rupees. There are some people who never take this line but are satisfied with a review before the Commissioner. In those cases I take my own view. But here is a case where the party has deposited 100 rupees and I have made the reference. There is the probability that my view may be wrong. But that will not enable the other companies who have paid the taxes without preferring such appeal to get back the taxes.

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Dr. A. R. Menon:—For your mistake in the interpretation of the law you should not make others to suffer.

Mr. K. Achyutha Menon:—That can be said in every case. Of course we have to take it. It can't be helped. I do not deny that from the moral point of view the matter may be argued. But then there is no end to it. Suppose the Chief Court on another reference takes another view. Can I re-assess an assessee. The principal point in all civilised jurisprudence is to attach some finality in its decisions. I have never heard of any invitation to the Government to unsettle all its concluded judgments merely because a court of law takes a different view on a particular point at a later time. That will be a very novel procedure and I submit if you accept it you are likely to create untold complications in the domain of Income-tax law. That is my point.

Mr. E. Ikkanda Warriar:—Of course I do admit that the case has been very cleverly and masterly argued by the Hon. Leader of the House. It is no wonder that the Government was able to present such an apparently beautiful case. The Government for their own convenience says that it is a concluded case and that they cannot re-open it. He was referring to the law of limitation with reference to certain pro-notes. It is only three years. Suppose the Chief Court held that it is four years, are we bound by that? No sane person will decide it like that because it is so clear and well-known.

Mr. K. Achyutha Menon:—I can give you concrete illustrations to show how the Chief Court have had to take different views on questions long thought to be concluded.

Mr. E. Ikkanda Warriar:—That analogy does not hold good in this particular case. So long as the Government admit that it is an immoral or rather an un-moral thing that they have collected, they have absolutely no right to collect this amount.

Dr. A. R. Menon:—They say that it is an immoral collection. Is there any difficulty for the Government to refund it. Does the Government admit that it is immoral.

Mr. K. Achyutha Menon:—According to the Chief Court it is a collection that ought not to have been made. The question is, should a refund be made on this account?

Mr. A. Sankara Menon:—The Commissioner referred this matter to the Chief Court as it was a definite matter of general importance. They passed a decision and therefore that decision should be given effect to in all cases.

Mr. K. Achyutha Menon:—Does my Learned Friend say that if after five years I refer a case of general importance to the Chief Court and that Court decides that the practice till then followed was wrong we are to make refunds? I am surprised that it is

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argued that concluded assessments should be re-opened because the question is one of general importance.

Mr. A. Sankara Menon—This is the first case that is referred after the enactment of the Regulation.

Mr. K. Achyutha Menon:—Every time a first case will be the first case. Suppose after 10 years I refer a first case of general importance and the Chief Court decides against me, can I re-open a concluded assessment on the ground that it is first case of general importance? There must be a limit to such reopenings.

Mr. E. Ikkanda Warriar:—Now the Government have conceded that they have collected a certain amount which they are not entitled to collect. Whether we call it immoral or un-moral it does not matter. The next question is whether the Government is bound by the Chief Court decision. There can be no doubt on this matter. Then there is still another question. It is asked. Suppose it comes after ten years are we bound to do it? There the question of equity comes. The Income-tax Law came into existence only two years back. Our people were asked to pay. Practically you were the final authorities in the matter. They did not even take pains to study the Income-tax Regulation. You told them that they have to pay such and such amounts. They paid them. They put complete trust in the Government officers. When a Government Officer, say the Diwan Peishkar asks them to pay they would not mind and thy think that they are bound to pay. It was in that spirit that the amounts were paid by the assessees. In the first place they were ignorant. They never thought that the Government would make an illegal demand on them. After all it is only one and a half years since you have been collecting the amounts. So the question of coming after ten years does not and will not arise. The Government's next position is that it is a concluded judgment. Technically the Government's position is correct. That is exactly the reason why I have come with this Resolution here. You alone have power now to undo the mischief done. We cannot get it redressed in a Court of law or any where else under the Regulation. That is why we have come to the Government and ask them to reconsider the question.

Dr. A. R. Menon:—How can they do it ?

Mr. E. Ikkanda Warriar:— The Government can issue an order to that effect. Probably they may have to pay some amount back which they were not entitled to have. I am surprised the Government is taking up the position of a money lender who has already got some money with him illegally. Why should the Government think like that? Government is the people, and the peoples' interests is the Government's. If they have done a wrong

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why should they cling to it. There are after all only a very few cases.

Mr: K. Achyutha Menon:—But the point involved is a large question of principle. Every time one point is decided, one item is not found taxable. That is the law.

Mr. E. Ikkanda Warriar:—There is no law involved here.

Mr. K. Achyutha Menon:—Then what is their sanctity of their moral case. Some great people who have got money and who subscribe to the Kuries have suffered. It may be the Kuri Leladhayam now, it may be some other matter to-morrow and to give a refund every time here is nothing special except some people who have paid some tax to the Government, and it is those people who feel most keen about it.

Mr. E. Ikkanda Warriar:—Sir. The Government could have studied the law before they began to collect the tax. Some people did not care to understand what the law is. If the Government had taken pains to understand what the law on the subject is they could have studied the law before they made collections. We do not understand the logic of the Government. It is in short that because they have got the power they have collected the amount. They have got behind them the power to collect the tax from us. If the taxes are not paid, they can attach the property, they can imprison us and it is because they have got such powers behind them that they are collecting this tax. Suppose I owe 100 rupees and if that is not paid within 30 days, an amount equal to that as fine will be collected from me. That power they have got with them. It is a most illegal collection. The last argument is most curious. They say that they themselves may have to commit similar mischiefs and that some illegal collections might be made in future, and that they will be compelled to refund them if they accede to this request now. That is the argument advanced by the Government. I do not think we will be moved by that. I request every member of the House that if there is any sense of justice and fairness in them they should vote with me for this proposition. With these words I press the motion.

Dr. A. R. Menon:— On a point of information. There is income-tax in Travancore also. Do they charge on this item

Mr. K. Achyuta Menon:—I am not aware of the practice in Travancore. I do not think there has been any decision with reference to that. I find from the Chief Court decision that it was argued on the assumption that there was no decided case. This case has arisen for the first time.

Dr. A R. Menon:—Do they charge this item in Travancore?

Mr. K. Achyuta Menon:—I have no information on that matter.

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Mr. P. Kumaran Ezhuthassan:—How is it in British India?

Mr. K. Achyuta Menon:—There are some authorities who collect it in British India. There have been some instances of non-collection.

Dr. A. R. Menon:—Can you not be a little more generous in this matter?

Mr. K. Achyuta Menon:—It would have been most generous in a sense not to collect any tax at all. But nobody has yet argued that it is not generous to levy Income-tax.

Dr. A. R. Menon:—If there is any doubt why can't you give the benefit of doubt to the public?

Mr. K. Ayyappan:—In view of the recent judgment of the Chief Court will the Government be pleased to call the explanation of the officer who interpreted the law?

Rama Varmha Tampuran:—He has not done anything wrong.

Dr. A. R. Menon:—May I know from the Law Member whether this item is charged in Travancore?

Mr. E. Ikkanda Warriar:—I may say for the information of the House if there is any slightest authority in that way our people who are so industrious, would have found it out. So in the absence of it, it must be thought that there is none.

Mr. Thomas Manjuran:—Such taxes were collected in British Malabar. I have the report of the Income-Tax Deputy Commissioner.

Mr. K. Achyuta Menon:—I may say that if it was not collected in Travancore or any other place the learned advocate who argued the case in the Chief Court for the party would have pointed it out as one argument. The entire omission of it shows it must have been collected in Travancore.

Motion put and lost.

(25) Appointment of a Commission to enquire into the Grievances of the Paliam Tenants.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.—സർ, പാലിയം എസ്റ്റേറ്റ്സ് ഗവൺമെന്റിലേയ്ക്കെടുക്കുവാൻ പാലിയത്തുനിന്നും ഗവൺമെന്റിനോടപേക്ഷിയ്ക്കുകയും ഗവൺമെന്റു മിക്കവാറും അതു സമ്മതിയ്ക്കുകയും ചെയ്തിട്ടുള്ളതായി അറിയുന്നു. എന്നാൽ ഇതേവരെ ഗവൺമെന്റ് ഈ സംഗതിയെക്കുറിച്ച് ഒരക്ഷരവും പുറത്തുമിണ്ടീട്ടില്ല; കുടിയാന്മാരുടെ അഭിപ്രായവുംകൂടി ഈ കാര്യത്തിൽ ഗവൺമെന്റ് അപേക്ഷിച്ചറിയേണ്ടതാണ്.

Mr. M. A. Chakko:—I second it.

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